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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/675,671	09/29/2000	Yoshito Shibauch	4035-0116P	3850

7590

08/19/2002

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/675,671

Applicant(s)

Shibauchi et al

Examiner

Lien Tran

Art Unit

1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jun 10, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-16 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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1. Claims 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Lines 5-9 are vague and indefinite because it is not clear what is intended. While the phrase “ at least one intermediate layer” means one layer or more, the claim does not positively set forth a plurality of intermediate layers. Thus, it is not clear what the phrase “ each of the at least one intermediate layer is bonded to others of the at least one intermediate layer” is referring to.

The new 112 second paragraph rejection is necessitated by amendment.

2. The 102 and 103 rejections of claims 12-16 over the recipe in the “ Fresno Bee” are hereby withdrawn.

3. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayfield in view of Mally et al and Nakajima.

Mayfield discloses an edible food product having multilayer structure that is wrapped in an edible film. The food product contains a layer of one food item placed on a layer of a second food item; the foods items may be any desired items. The multilayer food product may be comprised of any desired food materials and may have any number of layers and any number of different edible materials. The food product is wrapped in an edible film which prevents the product from sticking with the storage medium in which it is placed. Instead of forming a film, the gelled edible film material may be sprayed onto the food product. The individual slices of the

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food product having the edible film or layer thereon may be further wrapped together and packaged. (See columns 4-5)

Mayfield does not specifically disclose two external layers of platy material containing cheese and at least one intermediate layer which is cheese different or the same from the external layers.

Mally et al disclose platy food material containing cheese. (See the abstract)

Nakajima discloses platy food material containing cheese. (See the abstract)

Mayfield discloses the food product may be comprised on any desired food materials.

Thus, it would have been obvious to one skilled in the art to use any combination of food material to form food products having an assortment of taste, flavor and texture. For example, it would have been obvious to combine the platy food materials of Mally et al and Nakajima with a cheese to produce food product having the taste of meat, fish and cheese. It would also have been obvious to combine different type of cheese such as cream cheese with cheddar cheese or mozzarella cheese to obtain a food product with different cheese flavor, taste and appearance. The combination is endless and depends on the taste, flavor, texture, look desired. Mayfield discloses the individual slices are packaged together and since the slice has an edible film to prevent sticking, it is obvious the slice is releasable from adjoining slice.

4. Applicant's arguments with respect to claims 12-16 have been considered but are moot in view of the new ground(s) of rejection.

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5. In the response filed June 10, 2002, applicant made the comment that the "Draftsperson has not approved the formal drawings submitted by the applicants". The drawings will not be viewed by the Draftsperson until the application is at the stage of allowance. This is the reason why applicant did not receive the form PTO 948 with the office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

August 16, 2002


LIEN TRAN
PRIMARY EXAMINER
Group 1702